

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Part 2 of the Commission's)	ET Docket No. 00-258
Rules to Allocate Spectrum Below 3 GHz)	
for Mobile and Fixed Services to Support)	
the Introduction of New Advanced Wireless)	
Services, Including Third Generation Wireless)	
Systems)	

To: The Commission

REPLY COMMENTS

James D. and Lawrence D. Garvey d/b/a Radiofone ("Radiofone"), by their attorney and pursuant to Sections 1.415(c) and 1.421 of the Commission's Rules, hereby submit their reply to certain comments filed in this proceeding in response to the Commission's Eighth Report and Order, Fifth Notice of Proposed Rulemaking and Order (ET Docket No. 00-258), FCC 05-172, released September 29, 2005 ("Fifth NPRM").¹

In support hereof, the following is shown:

Statement of Interest

1. Radiofone is the licensee of Broadband Radio Service ("BRS") Station WLK290, authorized to operate on BRS (formerly MDS) Channel 2 at New Orleans, Louisiana. Accordingly, Radiofone has an interest in the Commission's disposition of issues related to the relocation of BRS Channels 1, 2 and 2A to replacement spectrum by the Advanced Wireless Service ("AWS") licensees who will ultimately occupy the 2150-2160/62 MHz band.

¹ The Fifth NPRM was published in the Federal Register on October 26, 2005. Accordingly, these reply comments are timely filed. See Fifth NPRM at Para. No. 60.

**The Commission Should Adopt the Relocations Proposals
Advanced by The Wireless Communications Association International, Inc.**

2. The issues raised in the Fifth NPRM address the relocation mechanisms and policies to be adopted by the Commission for migrating incumbent BRS Channels 1, 2 and 2A licensees from their current spectrum assignments to replacement channels in the 2.5 GHz band by future AWS licensees. The Fifth NPRM generally proposes to adopt the relocation policies currently codified in Parts 24 (Sections 24.239 – 24.253) and 101 (Sections 101.69 – 101.82) of the Rules, provisions that were adopted over ten years ago to govern the relocation of incumbent, point-to-point microwave licensees in the 1850 – 1990 MHz band by Broadband PCS licensees.

3. Radiofone agrees with The Wireless Communications Association International, Inc. (“WCA”) that the Commission’s proposal is unsuited to the relocation of BRS Channel 1, 2 and 2A licensees, and that an alternative relocation mechanism and policies should be adopted.² Unfortunately, the Commission’s proposal fails to acknowledge that the three BRS channels are currently used in point-to-multipoint operations (principally as either downstream analog video for wireless cable operations, or subscriber-to-hub communications by broadband internet access providers), which produces different engineering, interference and competitive concerns than were presented by past relocations of point-to-point microwave links.

4. For example, the Commission’s proposal would require a BRS licensee to provide its AWS competitor with a list containing the names, addresses and telephone numbers of its subscribers to permit the replacement of subscriber premises equipment by AWS licensees as part of the process of providing BRS incumbents with comparable

² See WCA Comments, filed November 25, 2005.

facilities. In addition, the Commission's proposal accords AWS licensees the opportunity and incentive to "run out the clock" on their relocation obligations, thus placing BRS licensees at risk of assuming secondary status and, hence, effectively ineligible for relocation under the comparable facilities doctrine. Such procedures are obviously rife with opportunities for the AWS licensee to engage in anti-competitive conduct, for all of the reasons discussed by WCA. Similarly, spectrum lessees should be accorded standing to obtain comparable facilities from the AWS licensees, independent from the licensee/lessor. As WCA correctly notes, in many instances the transmission equipment used to provide video or broadband service is owned by the lessee, and the lessee should be entitled to obtain replacement facilities under the comparable facilities doctrine.³ This really would pose no additional material burdens on the AWS licensee since it would be required to replace all of this equipment anyway if it were owned by the licensee/lessor, instead of by the lessee.

5. Radiofone respectfully submits that the WCA proposal better takes into full consideration the legitimate interests of all stakeholders in the relocation process than does the proposal set forth in the Fifth NPRM. Accordingly, Radiofone encourages the Commission to adopt WCA's recommendations.

CTIA's Proposal That Incumbent Licensees Make A Pre-Auction Filing Setting Forth Their Relocation Needs Should be Rejected

6. CTIA proposes that each incumbent BRS licensee be required to file a *pre-auction* statement setting forth: (i) the location of its network receivers and end user stations; (ii) a brief description of the services it provides, including quality of service and bit rate metrics; and (iii) a good faith estimated cost, on a system-by-system basis, for

³ WCA Comments, pp. 44 – 45.

relocating the network to the 2.5 GHz band.⁴ CTIA states that this information is needed to allow prospective bidders in the AWS auction “to consider the impact of relocation costs as a license acquisition matter” and thus assess the “true cost of the available licenses;” and that this “certainty would be enhanced by holding incumbents to a capped amount [for relocation costs] based on their pre-auction relocation estimates.”⁵ CTIA proposes that relocation costs be capped at 110% of the incumbent’s pre-auction cost estimates.⁶

7. This proposal is ill-conceived and should be rejected for four reasons. First, CTIA admits that “there is very little known about the costs for relocating the variety of BRS network architectures in place,” but nevertheless asserts that this information is needed to allow prospective AWS bidders to formulate their bids.⁷ CTIA provides no insight into how BRS incumbents would be able to realistically estimate relocation costs in light of the fact that very little is known about what these costs will ultimately be. Indeed, incumbents are no better able to estimate these costs than prospective auction participants, yet under CTIA’s proposal the risk of underestimating these costs would be borne exclusively by the BRS incumbents. Stated another way, binding BRS licensees to pre-auction cost estimates that ultimately prove too low simply would operate to deny the incumbents the adequate replacement facilities they are entitled to receive under the comparable facilities doctrine.

8. Second, in the past, the Commission has never required incumbent licensees subject to relocation to submit pre-auction relocation cost estimates in connection with

⁴ CTIA Comments, at pp. 6-7.

⁵ CTIA Comments, at pp. 7, 9.

⁶ CTIA Comments, at pp. 9 – 10.

⁷ CTIA Comments, at pp. 6, 9-10.

any other auction, and those auctions have yielded substantial revenues for the government. Thus, in the past, the absence of these cost estimates has never proved detrimental to conducting a robust and successful auction; nor has their absence prevented auction participants from formulating appropriate bid amounts. There is simply no valid reason to impose such a requirement here.

9. Third, a great deal of time is likely to elapse between the grant of AWS licenses and the actual BRS relocations. Thus, any cost estimates filed prior to the auction are sure to be quite stale when the time for relocation arrives.

10. Fourth, requiring BRS incumbents to disclose their end user locations in the pre-auction filing is tantamount to requiring the incumbents to disclose the identities of their subscribers. This is the type of competitively sensitive information that the Commission has never required an incumbent to disclose to a future competitor due to the obvious opportunity that it presents to engage in anti-competitive mischief.

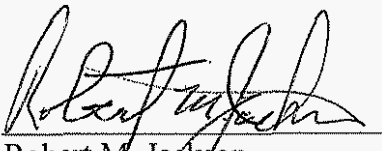
Conclusion

11. The proposals submitted by WCA should be adopted. CTIA's proposal that incumbent BRS licensees be required to file relocation cost figures prior to the AWS auction should be rejected.

Respectfully submitted,

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d/b/a Radiofone**

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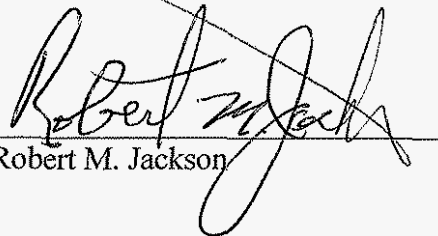
Dated: December 12, 2005

CERTIFICATE OF SERVICE

I hereby certify that I am an attorney with the law offices of Blooston, Mordkofsky, Dickens, Duffy & Prendergast and that on December 12, 2005 I caused to be mailed by first class United States mail, postage prepaid, a copy of the foregoing "**Reply Comments**" to the following:

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